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April 17, 1979

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RECORDATION NO. 9425-8
APR 17 1979 12 55 PM

INTERSTATE COMMERCE COMMISSION

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9-107A140

APR 17 1979

Date 50.00
Fee 0

RECORDATION NO. 9425-8
APR 17 1979 12 55 PM
INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
12th Street and Constitution Avenue
Washington, D. C. 20423

Dear Sirs:

Pursuant to the provisions of Section 11303 of the Interstate Commerce Act, as revised and recodified by Public Law 95-473, and the regulations of the Interstate Commerce Commission promulgated thereunder, we are transmitting for filing and recording originals or executed counterparts of the following documents:

1. Conditional Sale Agreement dated as of April 17, 1979 between Whittaker Corporation (Berwick Forge & Fabricating Division), Vendor, and National Railway Utilization Corporation, Vendee.
2. Agreement and Assignment of Conditional Sale Agreement dated as of April 17, 1979, by Whittaker Corporation (Berwick Forge & Fabricating Division), Assignor, to The First National Bank of Maryland, and Sun Life Insurance Company of America, Assignees, together with acknowledgment by National Railway Utilization Corporation.

The names and addresses of the parties to the transaction are listed below under the titles of the documents to which they are parties:

CONDITIONAL SALE AGREEMENT

Whittaker Corporation (Berwick Forge & Fabricating Division)

FEE OPERATION BR.
I.C.C.

APR 17 12 48 PM '79

RECEIVED

William B. Berger
C. D. Dwyer

& Fabricating Division) (Vendor)
P. O. Box 188
Berwick, Pennsylvania 18603

National Railway Utilization Corporation (Vendee)
1100 Centre Square
1500 Market Street
Philadelphia, Pennsylvania 19102

AGREEMENT AND ASSIGNMENT OF CONDITIONAL
SALE AGREEMENT

Whittaker Corporation (Berwick Forge
& Fabricating Division) (Assignor)
P. O. Box 188
Berwick, Pennsylvania 18603

The First National Bank of Maryland (Assignee)
25 South Charles Street
Baltimore, Maryland 21201

Sun Life Insurance Company of America (Assignee)
Sun Life Building
20 South Charles Street
Baltimore, Maryland 21201

A general description of the equipment covered by the Conditional Sale Agreement is contained in Exhibit A attached to this letter.

The above-identified documents have not heretofore been recorded with the Interstate Commerce Commission; however, they relate, and should be filed as a part of, a Conditional Sale Agreement Purchase Commitment Agreement dated as of May 31, 1978 which was filed with the Interstate Commerce Commission on June 5, 1978 (Recordation No. 9425). As with the Conditional Sale Purchase Commitment Agreement, the documents should be filed under National Railway Utilization Corporation and cross-referenced to Pickens Railroad Company.

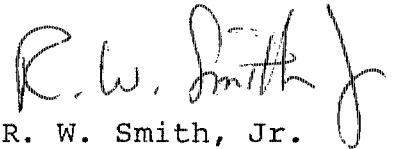
Please accept for recordation two counterparts of each document, stamp the remaining counterparts with the appropriate recordation number and return them with your fee receipt and letter confirming receipt to my delivering messenger.

Interstate Commerce Commission
April 17, 1979
Page Three.

PIPER & MARBURY

The necessary filing and recordation fees for
these documents are submitted herewith.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. W. Smith, Jr.", with a large, stylized flourish at the end.

R. W. Smith, Jr.

RWSJr/jks
Enclosures

Exhibit A

<u>Type</u>	<u>Builder's Specifications</u>	<u>Quantity</u>	<u>Road Numbers (Both Inclusive)</u>	<u>Price Per Unit</u>	<u>Total Base Price</u>	<u>Original Conditional Sale Indebtedness</u>	<u>Estimated Time and Place of Delivery</u>
70 ton, 50' 6" Class XM boxcars	C 78-1016-1 (October 16, 1978)	40	HOSC 250000- 250039	\$38,228	\$1,529,120	\$1,452,670	April 17, 1979 at Renovo, Pennsylvania

Interstate Commerce Commission
Washington, D.C. 20423

4/17/79

OFFICE OF THE SECRETARY

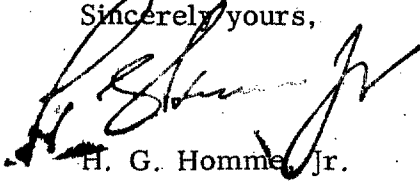
R.W. Smith, Jr.
Piper & Marbury
1100 Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/17/79 at 12:55pm, and assigned recordation number(s). 9425-R & 9425-Q

*was per
made*

Sincerely yours,


H. G. Homme Jr.
Secretary

Enclosure(s)

SE-30
(3/79)

APR 17 1979 - 12 55 PM

INTERSTATE COMMERCE COMMISSION
CONDITIONAL SALE AGREEMENT dated as of April 17,

1979 (the "Agreement"), among WHITTAKER CORPORATION (Berwick Forge & Fabricating Division) (the "Vendor" or "Builder" as more particularly set forth in Article 1 hereof) and NATIONAL RAILWAY UTILIZATION CORPORATION (the "Vendee").

WHEREAS, the Builder desires to construct, sell and deliver to the Vendee the railroad equipment described in Exhibit A attached hereto (the "Equipment"); and

WHEREAS, the Vendee desires to purchase the Equipment according to the terms and conditions provided herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors

for the time being to its manufacturing properties and business.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Exhibit A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Vendee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units of the Equipment, and each unit of the Equipment will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Exhibit A hereto (or if Exhibit A does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Exhibit A hereto; provided, however, that no delivery

of any unit of the Equipment shall be made until this Agreement has been filed pursuant to 49 U.S.C. §11303; provided further, that Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (e) of Article 17 hereof or the occurrence of any event of default (as described in Article 17 hereof) or event which, with the lapse of time and/or demand, could constitute such an event of default.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspectors or an authorized representative of the Vendee shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on

behalf of the Vendee and are marked in accordance with Article 11 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 15 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 15 hereof.

ARTICLE 4. Purchase Price and Payment. The total base price (the "Total Base Price") and price per unit (including all inspection and certification fees) are specified in Exhibit A attached hereto. In consideration of the manufacture and delivery of the Equipment, the Vendee agrees to pay to the Builder prior to delivery of the Equipment a down payment of \$76,450 and hereby agrees to pay in cash to the Vendor at such place and to such person as the Vendor may designate from time to time in writing, the following (hereinafter called the Purchase Price):

(a) Principal Payments - The principal sum of \$1,452,670 (hereinafter called the "Conditional Sale Indebtedness"), payable by one payment due and payable on the last day of the 6th month after the date of this Agreement in an amount equal to 10% of the Total Base Price, followed by 40 consecutive quarterly installments in the amount necessary to fully amortize the unpaid balance of the Conditional Sale Indebtedness, commencing on the last day of the 9th month after the date of this Agreement. The Vendor will furnish to the Vendee a schedule showing the respective amount of principal payable on each

principal payment date pursuant to this clause (a). The entire unpaid balance of principal and interest shall be due and payable on October 30, 1989.

(b) Interest Payments - Interest (computed on the basis of the actual number of days elapsed from the date of this Agreement divided by a year of three hundred and sixty (360) days) on the unpaid Conditional Sale Indebtedness shall be accrued and paid as follows:

(i) during the period commencing with the date of this Agreement and ending with the last day of the 6th month after the date of this Agreement, at a fluctuating rate of interest equal at all times to the prime rate at The First National Bank of Maryland plus $1 \frac{3}{4}\%$ per annum.

(ii) On the first day of the 7th month after the date of this Agreement the Conditional Sale Indebtedness shall be divided into two (2) equal amounts, one of which shall hereinafter be called "Portion A", and one of which shall hereafter be called "Portion B". Interest on the unpaid balance of Portion A shall be accrued and paid at the following rates for the periods indicated:

(A) during the period commencing with the first day of the 7th month after the date of this Agreement and ending with the last day of the 12th month after the date of this Agreement, at a fluctuating rate of interest equal to the prime rate at The First National Bank of Maryland plus $2 \frac{1}{4}\%$ per annum; and

(B) thereafter, and until the unpaid balance of Portion A is repaid in full, at a rate equal to the prime rate at The First National Bank of Maryland plus $2 \frac{1}{2}\%$ per annum, provided that such rate after the addition of the $2 \frac{1}{2}\%$ shall not be less than $8 \frac{1}{2}\%$ per annum or greater than 12% per annum, and provided further that the Vendee may elect, by written notice to the Vendor prior to the first day of the 13th month after the date of this Agreement, a fixed rate of $10 \frac{1}{2}\%$ per annum in lieu of the floating rate provided by this subarticle (b)(ii)(B).

Interest on the unpaid balance of Portion B shall be accrued and paid at the following rates for the periods indicated:

(C) during the period commencing with the first day of the 7th month after the date of this Agreement and ending with the last day of the 12th month after the date of this Agreement, at a fluctuating rate of interest equal to the prime rate at The First National Bank of Maryland plus 2 1/4% per annum; and

(D) thereafter, and until the unpaid balance of Portion B is repaid in full, at a fixed rate equal to 10 1/2% per annum.

All scheduled principal payments payable on or after the first day of the 7th month after the date of this Agreement shall be applied first to Portion A of the unpaid Conditional Sale Indebtedness, and after full repayment of such portion, then to Portion B of the unpaid Conditional Sale Indebtedness.

Interest shall be payable quarterly, commencing on the last day of the 3rd month following the date of this Agreement and continuing thereafter on the last day of every 3rd month. For purposes of the above, the prime rate shall mean the lowest unregulated per annum corporate lending rate publicly quoted by The First National Bank of Maryland for borrowers from time to time on loans of 90-day maturity. All increases or decreases in the prime rate at The First National Bank of Maryland shall be reflected immediately in the interest rate charged with respect to the unpaid Conditional Sale Indebtedness.

The Vendee will pay interest, to the extent legally enforceable, at the rate of 12% per annum upon all matters remaining unpaid after the same shall have been due and payable pursuant to the terms hereof or such lesser amounts as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. The Vendee may at any time without penalty prepay all or any portion of the Conditional Sale Indebtedness prior to the date it becomes due provided that each partial prepayment is in the amount of \$100,000 or a multiple thereof. All

prepayments shall be accompanied by accrued interest and any unpaid expenses due hereunder, and shall be applied first to the payment of such expenses, then to all accrued interest and any due and unpaid principal payments, and then to the prepayment of the Conditional Sale Indebtedness in inverse order of maturity.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee as provided in this Agreement. Any and all additions to the Equipment and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 9 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However the Vendor, if so requested by the Vendee at that time, will (a) execute a bill

or bills of sale for the Equipment transferring its title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 23 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 9 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for the failure of the Vendor to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Additonal Security. As additional security for the payment and performance of all obligations of the Vendee under this Agreement, Vendee hereby assigns and grants to the Vendor a security interest in the Equipment and in all of Vendee's right, title, and interest in and to the contract rights, chattel paper, accounts, rentals, fees,

charges, income and proceeds arising from or in connection with the use of the Equipment. The security interest in all of Vendee's right, title, and interest in and to the contract rights, chattel paper, accounts, rentals, fees, charges, income and proceeds arising from or in connection with the use of the Equipment provided by the Vendee to the Vendor under this Article 6 shall hereinafter be called the "Additional Security".

ARTICLE 7. Vendee's Representations and Warranties.

The Vendee warrants and represents to the Vendor as follows:

(a) The Vendee is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and carry on its business as now conducted and to enter into, execute and deliver this Agreement and to perform each and all the matters and things provided for herein.

(b) This Agreement has been duly authorized by all necessary corporate action on the part of the Vendee, and has been duly executed and delivered by the duly authorized officers of the Vendee and constitutes a legal, valid and binding obligation of the Vendee enforceable against the Vendee in accordance with its terms.

(c) The Vendee has filed all tax returns required by law to be filed and has paid all taxes, assessments and other governmental charges required to be paid by it.

(d) There is no action, proceeding or investigation pending or threatened (or any basis therefor) which, either in any case or in the aggregate, will result in any

material adverse change in the condition, business or prospects of the Vendee or in its properties or assets, or in any material liability on the part of the Vendee, or which questions the validity of this Agreement or any action taken or to be taken in connection herewith.

(e) The Vendee is not in violation of any provision of its Charter, by-laws, or this Agreement, or, in any material respect, any other document to which it is a party, and the execution, delivery and performance of this Agreement will not result in the violation of any such provision.

(f) The Vendee is not in violation of any statute, ordinance, rule, regulation, judgment, decree, order, license or permit applicable to it or the activities proposed to be conducted by it, and no consent, approval or authorization by any governmental authority is required in connection with the execution, delivery and performance of this Agreement.

(g) The Vendee and any lessee of the Equipment has complied, and at all times shall comply, with all provisions of Part 1036, Subchapter A of Chapter X of Title 49 of the Code of Federal Regulations - Incentive Per Diem Charges on Box Cars, and are qualified and at all times shall be qualified, to the extent provided therein, to collect incentive per diem charges on the Equipment in the possession of other railroads, and the Vendee is and will be entitled to apply the incentive per diem charges to the payment of the Conditional Sale Indebtedness.

(h) Except for the security interest granted by this Agreement, there are no other liens, encumbrances or

security interests which shall attach to the Equipment upon delivery of the same to Vendee.

(i) This Agreement and any assignment thereof have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and such filing and recordation will protect the Vendor's interest in and to the Equipment under this Agreement and no filing, recording or deposit with any other federal, state or local government is necessary in order to protect the first lien ownership and first security interest of the Vendor in and to the Equipment in the United States of America; and the financing statements necessary to perfect the Vendor's first security interest in the Additional Security have each been duly recorded and filed in the appropriate offices and places and no other filing or recording is necessary to perfect the Vendor's first security interest in the Additional Security.

ARTICLE 8. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use,

payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 9. Maintenance; Casualty Occurrences; and Insurance. The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, or, in the opinion of the Vendee irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness and the Vendor will promptly furnish to the Vendee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendee may request, calculated as provided in Article 4 hereof.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee of such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Conditional Sale Indebtedness thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Conditional Sale Indebtedness in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original price of such unit as set forth in Exhibit A bears to the Total Base Price.

The Vendee will maintain at all times during the

effective period of this Agreement with respect to the Equipment, fire and all risk physical damage insurance in an amount equal to the total Casualty Value of all the Equipment and public liability insurance for an amount of not less than \$3,000,000 for each person and \$3,000,000 for each occurrence, all such insurance containing such terms, and in such form, for such purposes and written by such companies as may be satisfactory to Vendor, payable to Vendor as its interest may appear or as additional insured, and Vendee will deliver to Vendor at its request evidence satisfactory to Vendor that such insurance has been so procured and made payable to Vendor. If Vendee fails to maintain satisfactory insurance, Vendor shall have the option to do so and Vendee agrees to repay with interest at the rate of 12% per annum, all amounts so expended by Vendor.

ARTICLE 10. Reports and Inspection. On or before March 31 in each year, commencing with the calendar year after delivery of the Equipment hereunder, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and number of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, including, but not limited to, the names, initials or other insignia at that time identifying each unit of

Equipment and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 11 hereof have been preserved or replaced.

Within 90 days after the end of each of its fiscal years and within 45 days after the end of each of its first three fiscal quarters, the Vendee shall deliver to the Vendor a consolidated balance sheet as of the end of such year or quarter and a consolidated statement of income and changes in financial position for the year or quarter then ended. The annual statements shall be audited without exception as to scope and reported upon by independent certified public accountants reasonably satisfactory to the Vendor; the quarterly statements shall be unaudited but shall be certified by the chief financial officer of the Vendee. Each such statement shall be accompanied by a certificate of the chief financial officer of the Vendee stating that, to the best of his knowledge and belief based upon reasonable investigation, during the period from beginning of the period covered by the statement of income through the date of the certificate no default or event of default existed or, if so, describing in reasonable detail the nature and extent thereof and stating whether or not the same has been cured and specifying the nature of any corrective action taken or proposed to be taken. Each such audited statement shall be accompanied by a letter from the independent certified public accountants reporting there-

on stating whether or not the normal course of their audit disclosed any such default or events of default and, if so, describing the nature and extent thereof and stating whether or not the same has been cured.

The Vendor shall have the right, by its agents, to inspect the Equipment and the books and records of the Vendee and any of its parents, subsidiaries or affiliates, as well as all records pertinent to the Equipment of any lessees or lessors of the Equipment, at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the identifying number as set forth in Exhibit A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each unit in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Revised Interstate Commerce Act, Section 11303" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over

the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor or filed, recorded or deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Vendee or its subsidiaries and affiliates, or by any lessee under any lease permitted by Section 13 hereof.

ARTICLE 12. Compliance and Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful

rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 13. Possession and Use. So long as the Vendee shall not be in default under this Agreement, the Vendee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Agreement, but, without the prior written consent of the Vendor, the Vendee shall not assign or transfer its interest under this Agreement in the Equipment or any unit thereof except as provided in this Article 13. The Vendee shall not, on a regular basis, operate or use any unit of the Equipment outside the United States of America, nor shall it permit others to operate or use, on a regular basis, any unit of the Equipment outside the United States of America.

So long as the Vendee shall not be in default under

this Agreement, the Vendee shall also be entitled (i) to the use of the Equipment by it or any of its subsidiaries or affiliates upon lines of a railroad owned or operated by it or any of its subsidiaries or affiliates or upon lines of a railroad over which the Vendee or any such subsidiary or affiliate has trackage or any other operating rights or over which railroad equipment of the Vendee or any such subsidiary or affiliate is regularly operated pursuant to contract, (ii) to permit the use of the Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and (iii) to lease any unit or units of the Equipment to other railroad companies incorporated under the laws of any state of the United States or the District of Columbia, for use in connection with their operations, provided, however, with respect to (iii), all of the following are satisfied:

(a) all such leases shall prohibit any lessee from assigning or permitting the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America;

(b) all such leases shall provide that the rights of any lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement;

(c) the lessee under any such lease has complied with all provisions of Part 1036, Subchapter A of Chapter X of Title 49 of the Code of Federal Regulations - Incentive per Diem Charges on Box Cars, and is eligible and entitled to the

extent provided therein, to collect incentive per diem charges on the Equipment in the possession of other railroads, and to apply the incentive per diem charges to the payment of all rentals due under the lease; and

(d) a copy of such lease shall be furnished to the Vendor.

The Vendee may receive and retain compensation (subject to the provisions of Article 4 hereof) for such use from other railroads and companies so using any of the Equipment.

Nothing in this Article 13 shall be deemed to restrict the right of the Vendee to assign or transfer its interest under this Agreement in the Equipment for possession of the Equipment to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Vendee hereunder) into or with which the Vendee shall have become merged or consolidated or which shall have acquired the property of the Vendee as an entirety or substantially as an entirety, provided that the assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Agreement, and provided further, that any such corporation shall be of a character so that, after giving effect to any such transaction, the credit standing of the Vendee, assignee or transferee shall not, in the Vendor's reasonable judgment, be adversely affected as it may affect Vendor's rights hereunder.

ARTICLE 14. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due or delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 15. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and

expense in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention of the Vendor of title to and a security interest in the Equipment, and the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, or any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person. The covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of and shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any unit of or all the Equipment.

The agreement of the parties relating to the Builder's warranty with respect to material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Exhibit B attached hereto and made a part hereof.

ARTICLE 16. Assignments. The Vendee will not (a) except as provided in Article 13 hereof, transfer the right to possession of any unit of the Equipment or (b) sell,

assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee), and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to compliance with the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the assignee or transferee assuming any of the obligation of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 15 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 4, 8, and 15 hereof or any other obligations which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, together with

a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that this Agreement, or some of or all the rights of the Vendee hereunder, will be assigned to the First National Bank of Maryland and Sun Life Insurance Company of America (collectively the "Assignees") pursuant to an Agreement and Assignment of even date herewith. The assignment to the Assignees is being made in accordance with a Conditional Sale Agreement Purchase Commitment Agreement entered into by the Vendee, the Assignees and Pickens Railroad Company for the purpose of providing the Vendee with a commitment for interim financing of the purchase of railroad equipment and thereby provide the Vendee with the flexibility to locate investors to provide the long term financing required for the purchase of such railroad equipment. Pursuant to this arrangement, it is the intention of the Vendee and the Assignees that upon the location by the Vendee of such long term investors, the

Vendee will seek to have the Assignees enter into an agreement (acceptable in form and substance to the Assignees in their sole discretion) to reassign this Agreement to such investors. The extended repayment provisions provided in Article 4 hereof provide a method of repayment by the Vendee in the event that acceptable long term investors can not be located.

The Vendee expressly represents, for the purpose of assurance to the Assignees or any other person, firm or corporation who may from time to time acquire this Agreement or all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignees or any other future assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

The Vendee will (a) in connection with the settle-

ment for the Equipment, deliver to the assignee, at the time of the delivery of the Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall not have been assigned by the Builder and payment shall not have been made with respect to units of Equipment or if the Assignees shall not make payment to the Builder with respect to units of the Equipment as provided in the instrument making such assignment, the Builder will promptly notify the Vendee of such event and, if such amount shall not have been previously paid by the Assignees, the Vendee will, not later than 30 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of the Equipment, together with interest from the day such payment was due to the date of payment by the Vendee at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

ARTICLE 17. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any principal sum payable by the Vendee when payment thereof shall be due hereunder; or

(b) The Vendee shall fail to pay any interest or other sum when payment thereof shall be due hereunder and such failure to pay shall continue for 10 days after written notice thereof (provided, however, that written notice shall be automatically satisfied by the prior delivery to the Vendee of an invoice or payment schedule, including any schedule provided pursuant to Article 4 hereof, providing notice of the due date and amount of interest and other sums payable to the Vendor); or

(c) The Vendee shall, for more than 30 days after the Vendee shall have received written demand for performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement (other than those covered by sections (a), (b) and (f) of this Article 17), or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provisions satisfactory to the Vendor for such compliance; or

(d) Any material representation or warranty of the Vendee in this Agreement shall prove to be incorrect in any material respect on the date as of which made; or

(e) Any proceeding shall be commenced by or against the Vendee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this Agreement), and (i) such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective within sixty (60) days after such proceedings shall have been commenced, or if dismissed, nullified, stayed or rendered ineffective, such dismissal nullification, stay or rendering ineffective shall have been terminated, or (ii) all the obligations of the Vendee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or for the Vendee's property in connection with any such proceedings, within 30 days after such appointment and in

such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers; or

(f) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon receipt of written notice by the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest and any other sums due hereunder shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness, with interest as aforesaid, and to collect such judgment out of any property of the Vendee wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, recission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee of any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Vendee, any lessee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the railroad lines or premises controlled by the Vendee, or on any other lines of railroad or other premises approved by the Vendor for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises which, or the use of which, are owned or controlled by the Vendee (directly or indirectly), or on any lines of railroad or other premises approved by the Vendor and reasonably convenient to the Vendee, for a period not exceeding six months, provided, however, that the Vendee may at its option and expense cause such storage to be made on the lines of other railroads or other premises (subject in all cases to approval by the Vendor) if the storage on the Vendee's line would interfere with the operation of the railroads of the Vendee. The Vendee agrees either to provide the facilities necessary for such storage or to pay all costs and expenses of such storage, and such storage shall be at no cost or expense to the Vendor. This agreement of the Vendee to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled

to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claim against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee by telegram or registered mail, addressed as provided in Article 23 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together

with interest thereon accrued and unpaid and all other payments due under this Agreement, including reasonable attorney's fees and all expenses of the Vendor on retaking possession of, removing, storing and holding the Equipment, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee, provided further, that if the Vendee objects in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 18.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and

prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 23 hereof. If such sale shall be a private sale, it shall be subject to the rights of the

Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor and the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's

rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee, as the case may be, to the extent of their respective interests therein.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 20. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with 49 U.S.C. §11303; the Vendee will also cause any financing statement with respect to this Agreement to be filed and recorded in the form and manner required by law in all offices and places necessary to perfect the lien on and security

interest in the Equipment and Additional Security; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further information required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to and security interest in the Equipment, its security interest in the Additional Security and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 21. Payment of Expenses. The Vendee will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first and second assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including specifically all reasonable fees and expenses of the Assignees related to the initial assignment of this Agreement and any reassignment as contemplated by Section 16 hereof (including all reasonable fees and expense of the Assignees' counsel).

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for con-

venience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Exhibits hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 23. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed in the United States by certified or registered mail to it at its chief place of business at the following specified addresses:

(a) to the Vendee, at 1100 Centre Square East, 1500 Market Street, Philadelphia, Pennsylvania 19102, Attention: Vice President-Finance,

(b) to the Builder, at P. O. Box 188, Berwick Pennsylvania, 18603,

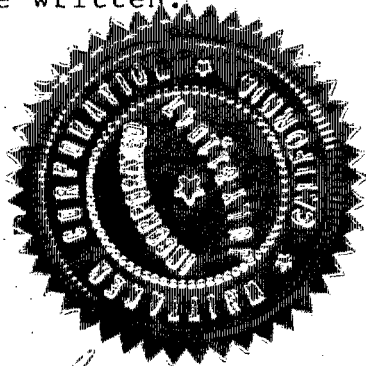
(c) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 24. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts numbered consecutively in ascending order, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart, but only the counterpart that is labeled "Counterpart No. 1" shall be deemed to be the original which may be transferred and given to transfer the rights of the Vendor hereunder. Although this Agreement is dated as of the date first above written, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF the parties hereto have executed or caused this instrument to be executed all as of the date first above written.



[Corporate

WHITTAKER CORPORATION (Berwick Forge & Fabricating Division)

By

John Barbera
Authorized Signatory

Attest:

Charles F. Edmoo

NATIONAL RAILWAY UTILIZATION CORPORATION

[Corporate Seal]

By

Charles P. Turner
Vice President

Attest:

Martha E. Turner
Asst. Secretary

Commonwealth of Pa.)
County of Columbia) SS:

I HEREBY CERTIFY, that on this 12th day of April, 1979, before the subscriber, a Notary Public in and for said City and State personally appeared J. La Barbera, who, being by me duly sworn, says that he is a Authorized Signatory of WHITTAKER CORPORATION (Berwick Forge & Fabricating Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the

execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this 12th day of April, 1979.

[Notarial Seal]

My Commission expires:

Lloyd H. Adams
Notary Public
LLOYD H. ADAMS, NOTARY PUBLIC
BERWICK BOROUGH, COLUMBIA COUNTY
MY COMMISSION EXPIRES SEPT. 19, 19
Member, Pennsylvania Association of Notaries

State of Pa.)
City of Phila.) SS:

I HEREBY CERTIFY, that on this 12th day of April, 1979, before the subscriber, a Notary Public in and for said City and State personally appeared *Charles F. Turnbuck*, who, being by me duly sworn, says that he is a Vice President of National Railway Utilization Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this 16th day of April, 1979.

[Notarial Seal]

My Commission expires:

Darlene Marquette
Notary Public

DARLENE MARQUETTE
Notary Public, Phila., Phila. Co.
My Commission Expires Sept. 13, 1982

Exhibit A
to
Conditional Sale Agreement

<u>Type</u>	<u>Builder's Specifications</u>	<u>Quantity</u>	<u>Road Numbers (Both Inclusive)</u>	<u>Price Per Unit</u>	<u>Total Base Price</u>	<u>Original Conditional Sale Indebtedness</u>	<u>Estimated Time and Place of Delivery</u>
70 ton, 50'6" Class XM boxcars	C 78-1016-1 (October 16, 1978)	40	HOSC 250000- 250039	\$38,228	\$1,529,120	\$1,452,670	April 17, 1979 at Renovo, Pennsylvania

Exhibit B

to

Conditional Sale Agreement

Warranty of Builder

The Builder warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 and Exhibit A of the Conditional Sale Agreement to which this Warranty is attached (hereinafter called the Agreement) and warrants its Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Vendee and not manufactured by the Builder) and workmanship and design (except as to designs specified by the Vendee and not developed by the Builder) under normal use and service, the Builder's obligation under this Warranty being limited to making good at its plant any part or parts of any unit of its Equipment which shall, within one year after the delivery of such unit of Equipment to the Vendee, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective. In no event shall the Builder be liable to anyone for any incidental, special or consequential damages of any kind.

THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT FOR THE PATENT INDEMNIFICATION STATED BELOW.

Except in cases of articles or materials specified by the Vendee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee, and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes

or is claimed to infringe on any patent or other right. The Vendee will give prompt notice to the Builder of any claim actually known to the Vendee which is based upon any such alleged infringement, will assist the Builder in connection with any such claim, and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. If in connection with any such claim the use of the Equipment (or any part thereof) is enjoined, Builder shall either at its expense and option procure for the Vendee the right to use the Equipment (or any part thereof), or modify them so that they no longer infringe, or replace them with non-infringing boxcars which are equal to the Equipment in both form and quality.

The Builder further agrees with the Vendee that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Warranty.